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American Neutrality and League Wars

DISCUSSION of Senator Borah's resolution of February 21, suggesting the need for a conference to recodify maritime law, has raised the larger question of the possible effect of the Covenant of the League of Nations upon the present concept of neutrality. It is argued, for example, that the League Covenant tends to eliminate neutrality by virtue of its provisions pledging members to unite against a covenant-breaking state, and that the pre-war conception of neutrality is no longer tenable.

The preceding issue of the *Information Service* reviewed the recent history of maritime rights and obligations. This report deals specifically with the effect of the League of Nations upon the concept of neutrality. Is neutrality possible within the framework of the League—that is, is neutrality ever possible for Members of the League? If neutrality were found incompatible with the fundamental principles of the League, would that affect the legal position of non-members of the League who wish to be neutral? Would the neutrality of the United States in a war of League Members against an aggressor state really hamper the League? What would be the attitude of the United States, a non-member, towards international police measures (undertaken against an aggressor state, but with incidental damage to the rights of non-Members) which the League might maintain did not create a state of war and, therefore, could not give rise to neutral rights?

In modern times, when a war breaks out, nations not directly involved in the dispute remain at peace. They are neutrals. Nevertheless, the fact that war exists has its effect upon their relations with the belligerents.

Under international law neutrality is regarded as a legal relationship—a status, situation, or condition of law, rather than a condition of fact. Neutrality, therefore, may be defined as the legal status arising from the abstention of a state from all participation in a war, the maintenance by it of an attitude of impartiality in its dealings with belligerents and, correspondingly, the recognition by belligerents of this abstention and impartiality.[1]

1. Cf. Oppenheim, L. F., *International Law*, 4th ed. by McNair. Vol. 2. p. 475.

The Convention on Maritime Neutrality, signed at the Sixth Pan-American Conference, February 20, 1928, in a definition of neutrality, states that it is "the juridical situation of States that do not take part in hostilities and that it creates rights and imposes obligations of impartiality."[2]

Once the attitude of impartiality is adopted by a third state and acquiesced in by both belligerents, the status of neutrality arises with its legal rights and obligations.

NEUTRALITY A LEGAL CONCEPT

The legal concept of neutrality does not require impartiality of thought or suspension of judgment on the part of the citizens of a state, but, nevertheless, the government in its acts must observe its legal obligations.[3]

The neutral is not compelled to make any decision as to the justice of belligerent claims, but it is obligated to accord equal treatment to all parties — regardless of which is the aggressor nation; regardless of whether a war is "just" or "unjust." The state of neutrality, said Secretary of State John Quincy Adams in 1818, recognizes the cause of both parties as just; that is, it avoids all consideration of the merits of the contest.[4]

Some reasons for the existence of this concept of neutrality are suggested by a recent student of the subject.[5] Hitherto, says Professor Whitton, abstention from war has been regarded as praiseworthy; by remaining aloof when others were swayed by the passions of war the neutral helped to localize the conflict. The reasons for an attitude of impartiality were self-interest and the lack of any international means for determining which of the parties in conflict was wrong. If a state were to decide this question for itself, it would be tantamount to a claim to sit in judgment on the merits of a controversy with which it had no direct concern. Moreover, the decision would expose this self-appointed judge to the possible hostility of the nation found guilty. Self-interest compelled states who wished to avoid war to treat both belligerents impartially. Even though it were easy to determine the guilty party, there existed no international sanctions to be applied against the peace-breaking state. In short, the recently advocated conception of the solidarity of nations was non-existent.

NEW CONCEPT ARISES DURING WORLD WAR

The juristic conception of sovereignty was considered by some writers to be inconsistent with the growth of any conception of international solidarity. One of the consequences of the doctrine of sovereignty, according to David Hunter Miller, was that any sovereign state might "at its pleasure attack another, go to war, and this either for a good reason, a bad reason or no reason at all."[6]

Even the violation of international law was not considered the concern of any state other than the one immediately affected by the breach. As Elihu Root said in 1915, "Up to this time breaches of international law have been treated as we treat wrongs under civil procedure, as if they concerned nobody except the particular nation upon which the injury was inflicted and the nation inflicting it. There has been no general recognition of the right of other nations to object."[7]

The World War played havoc, not only with the rules defining neutral rights and belligerent obligations,[8] but with the very concept of neutrality. The resentment of the Allies, because the United States sought to maintain its neutrality in a war which the Allies regarded as a war for humanity, manifested itself in an attempt to create the idea that a neutral was a "slacker."

2. In the absence of previous treaty commitments, when a war breaks out between two states a third state is free to go to war or not at choice. There is no question of either a legal right or a legal obligation to remain neutral. The decision to be or remain neutral is in the realm of international politics rather than the realm of international law. The "right" of a country to remain neutral pertains to sovereignty, and is in no sense a legal right. Similarly, the question of whether the belligerents recognize the attitude of impartiality adopted by a third state is a question outside the realm of law.

3. Cf. Hershey, A. S. *Some Popular Misconceptions of Neutrality.* (American Journal of International Law, Vol. 10, (1916) p. 118-121.) Hereafter the American Journal of International Law will be cited as A. J. I. L.

4. Moore, J. B., *Digest*, Vol. VII, p. 860.

5. Whitton, John B. *La notion de la neutralite et la Societe des Nations.* Author's MS. of lectures given in 1927 at the Hague Academy of International Law.

6. Miller, D. H. *Sovereignty and Neutrality.* International Conciliation, No. 220, May, 1926. p. 283.

7. American Society of International Law, *Proceedings* (1915) p. 8.

8. These have been discussed in a previous *Information Service*, Vol. IV, No. 1, "Neutral Rights and Maritime Law."

Neutrality was pictured as a state of ignoble selfishness, connoting a defective moral sense.

This same concept continued to be discussed after the war, in connection with plans for a League of Nations. Neutrality would be reprehensible, it was argued, when all the nations should be combined to punish an aggresor; it would be nothing less than "sheer indifference towards just causes." Neutrality localized a war, it was true, but this was just what an aggressor sometimes wanted. It is unquestionable, wrote the Swiss Federal Council in 1919, that the World War has spread the conviction "that every war is at bottom the affair of every state."[9]

HISTORICAL JUSTIFICATIONS FOR THE NEW CONCEPT

Historical justifications for the new concept of neutrality were not lacking. It was pointed out that the new conception was merely a return to the pre-Grotian conception of just and unjust wars. Attempts of the early publicists to make the distinction between just and unjust wars a rule of law failed because, as an abstract proposition, it was impossible to determine in advance the justice or injustice of a particular war. As Fenwick says, the "general principle was accepted that a nation must not go to war except for just causes; but the application of the principle to the concrete case did not get beyond the province of international morality or ethics."[10]

The rise of the conception of sovereignty as legally absolute power relegated to temporary oblivion the theory of the *justum bellum*,[11] and it was not until after the development of the new idea of international solidarity that this theory was revived. It appeared in new clothes in the Covenant of the League of Nations.

Rather than a definition of a just war, the new trend seeks to establish some means whereby the collective judgment of the international community may deal with the question as it arises in each particular war.

Should the community of nations decide that a war is not just and accordingly employ international pressure—in the form of either economic or military sanctions—to force an aggressor to conform to the collective judgment, the old idea of neutrality may appear in a different light. In the first place the fact that a state remains neutral (assuming an effective system of international sanctions) may indicate a selfish indifference to the cause of international righteousness. Even assuming that a state has a good reason for remaining neutral, it is argued that it should no longer accord impartial treatment to the belligerents of both sides, that it should differentiate its treatment of belligerents according to the justice of their cause.[11a]

WAR AND NEUTRALITY UNDER THE LEAGUE COVENANT

After this preliminary outline of the probable theoretical effect of an effective international solidarity upon the concept of neutrality, it is possible to examine the concrete example of international solidarity, that is, the League of Nations, in its relation to neutrality.

It is undeniable, said the Swiss Federal Council in 1919,[12] that in the region of abstract ideas neutrality and a League of Nations are mutually exclusive. As long as the League is not universal, however, neutrality on the part of some states will probably continue to exist. Non-members of the League will decide for themselves, as in the past, what course they will pursue when wars break out. Even among the members of the League the Covenant fails to prohibit neutrality in all cases.

9. *Message of the Federal Council of Switzerland to the Federal Assembly of Switzerland concerning . . . the Accession of Switzerland to the League of Nations*, August 4, 1919. Cited hereafter as *Message*.

10. Fenwick, C. G. *International Law*, p. 384.

11. Politis, N. *Les Nouvelles Tendances du Droit International*, p. 100.

11a. The original Resolution, introduced in the U. S. House of Representatives in December, 1927 by Representative Theodore E. Burton was in accordance with the new conception that a neutral should differentiate its treatment of belligerents according to the justice of their cause. Cf. p. 29.

12. *Message*, p. 25. The permanent neutralization of Switzerland since 1815 raised an important question when Switzerland considered joining the League of Nations. Would its obligations as a member of the League force Switzerland on occasion to abandon its neutrality? The Swiss Federal Council made a searching examination of the Covenant at this time and as one of the terms of admission made the reservation that Switzerland "shall not be forced to participate in a military action or to permit the passage of foreign troops, or the preparation of military enterprises upon her territory." (See Oppenheim, op. cit., Vol. 2, p. 474.)

CASES IN WHICH LEAGUE MEMBERS MAY GO TO WAR

An examination of the Covenant of the League of Nations shows that in certain cases it is possible for League Members to go to war without violating their engagements under the Covenant. Classified according to their purpose, the wars which are possible for League Members may be summarized as follows:

I. Wars to enforce judicial decisions, arbitral awards, or recommendations of the Council.

II. Private or duel wars, *e. g.*, wars which may arise when the Council fails to reach a unanimous agreement.

III. Punitive wars directed against a state which is guilty of a breach of the Covenant.

These three kinds of wars and the opportunities they give for neutrality on the part of League Members may now be discussed serially.

I. Wars to enforce a judicial decision, an arbitral award, or a "unanimous" recommendation of the Council.

(a) *To enforce an arbitral award or judicial decision.*[13] Under Article 13, Paragraph 4,[14] the Members agree "that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith." Thus, by implication,[15] the member which complies would have a right to go to war against a Member which does *not* comply unless prevented by some other provisions of the Covenant, such as the last sentence of Article 13, Paragraph 4.[16]

This sentence reads that "in the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto." Does this prevent a war of enforcement? The Council can only *propose* measures to be employed against the non-complying state. The state wishing to go to war is, therefore, free to do as it chooses.[17]

If a war of execution is legally possible for a *party to the dispute* which complies with an arbitral award or judicial decision under Article 13, the question immediately arises: Have the Members of the League *other* than the parties in dispute a right to remain neutral? Commentators are not explicit on this point. They expressly recognize the right of the party in dispute which complies with the award to go to war against the non-complying opponent unless the Council intervenes.[18] By implication the other states remain neutral.

(b) *To enforce a unanimous report by the Council.* Although the members of the League agree to carry out any arbitral award or judicial decision, they do not agree to carry out any unanimous opinion of the Council that may be rendered. However, under Article 15, Paragraph 6, the Members of the League agree not to go to war with any party to a dispute which complies with the "unanimous" recommendations of the Council.

By implication, therefore, the complying member, after three months, can go to war with the party which does not comply with the Council recommendation, unless some other provision of the Covenant prevents, *e. g.*, unless in conformance with Article 11 the League intervenes in the matter.[19] In such a case the Members of the League other than the parties in dispute may remain neutral. (According to Schücking und Wehberg, they *must* remain neutral, unless they

13. Article 12 provides that:

"The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators, or the judicial decision, or the report by the Council."

If Members refuse to submit a dispute to one of the three methods and resort to war in violation of their pledges under Article 12, the sanctions of Article 16 apply.

14. Articles 10-17, inclusive, of the Covenant are printed in an Appendix to this report.

15. This right may be implied from Articles 12, par. 1; and 13, par. 4. Cf. Gonsiorowski, M., *Societe des Nations et Probleme de la Paix*, Vol. II, p. 332 ff. Schücking und Wehberg, *Die Satzung des Volkerbundes*, p. 532, say the complying member can go to war only if the Council fails to reach unanimity under the last sentence of Article 13, par. 4.

16. Or possibly Article 11. Cf. below p. 24. The party to the dispute which complied could not legally go to war, however, until three months after the award because of its agreement under Article 12.

17. Cf. Gonsiorowski, Op. cit. Vol. II. p. 330.

18. Cf. Schücking und Wehberg. Op. cit. p. 532-4.

19. Schücking und Wehberg, Op. cit. p. 513. Cf. Below p. 24.

go through one of the methods stated in Article 12.[20])

DUEL OR PRIVATE WARS

II. If the Council fails to make a unanimous report, another type of war is possible for League Members—a war "for the maintenance of right and justice," the so-called duel war or private war. This kind of war might arise under Article 15, Paragraph 7,[21] which provides that if the Council *fails* to reach a "unanimous" report "the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice." Thus, the failure of the Council to reach unanimity in its recommendations on a dispute leaves the parties free to fight after a period of three months has elapsed unless some other provision of the Covenant prevents, *e. g.*, Article 11.

Similarly, a private war may arise three months after the recommendation, if *neither* party complies with a "unanimous" recommendation of the Council, or when the Council finds that the dispute is by international law a "domestic" question.[22]

Neutrality of other League Members is possible here, also, and, according to the broad constructionists, obligatory.[23]

PUNITIVE WARS UNDER ARTICLE 16

III. Wars to preserve as against external aggression the territorial integrity and existing political independence of all Members of the League are legally possible for League Members under Article 10 of the Covenant. Implied in this article is the right to go to war in self-defense. From the point of view of the members other than the state attacked the war is licit either (a) as a war under Article 10 to preserve the attacked state from aggression or (b) as a war under Article 16 to punish a covenant-breaking state.

Is neutrality possible for any League Members in such a "punitive" war? Early commentators agreed that a breach of the Covenant would lead automatically to a war of all League Members against the covenant-breaker. The Swiss Federal Council in its commentary on the Covenant in 1919 said that Article 16 announces "once and for all that in certain contingencies a state of war exists."[24]

At the opposite extreme from those who argued that a violation of the Covenant automatically caused war and made neutrality impossible for League Members was a school of interpretation which argued that the sanctions envisaged in Article 16 were measures short of war. Moreover, these sanctions—non-intercourse, economic blockade, military pressure—were not incompatible with the maintenance of neutrality by League Members.[25]

INTERNATIONAL POLICE MEASURES INSTEAD OF WAR

The most recent theory maintains that although a war of League Members against an aggressor state may arise under Article 16, the enforcement of the sanctions of that article — non-intercourse, economic blockade, even military pressure—need not necessarily involve either war or neutrality. They would be international police measures taken by League Members against a covenant-breaking state. It was discovered that a breach of the Covenant does not *ipso facto* create a state of war. Article 16 says that a Member which resorts to war in disregard of its covenants under Articles 12, 13, or 15 "shall *ipso facto* be deemed to have committed an *act* of war against all other Members." In international law there is a distinction between an *act* of war and a *state* of war. The Second Assembly recognized this distinction in 1921

20. Ibid. p. 514,597; Cf. *contra.* Gonsiorowski, Op. cit. Vol. II, p. 380 ff. Similarly under Article 15, par. 10, and Article 17, par. 1, there is the possibility of a legal war in case a party wishes to enforce an award or recommendation in its favor which the other party has failed to carry out. Neutrality of other League Members is then also possible.

21. Schücking und Wehberg, Op. cit. p. 513. Gonsiorowski, Op. cit. Vol. II. p. 332.

22. Cf. par. 6 and 8, Art. 15. Cf. Gonsiorowski, Op. cit. p. 332. The possibility of private wars or war duels is considered the biggest gap in the peace machinery of the League. For a discussion of attempts made by the Assembly to fill in this gap see F. P. A. *Information Service.* Vol. III. No. 25. "The League of Nations and Outlawry of War," p. 399.

23. Schücking und Wehberg. Op. cit. p. 513.

24. *Message.* p. 129. Similarly, according to Schücking und Wehberg, Op. cit. p. 603-4, various projects for a League of Nations by Lord Phillimore, President Wilson, General Smuts, Lord Cecil, and the Italian Government all provided that a state of war should automatically arise if the Covenant were violated.

25. Among the chief proponents of this theory of sanctions was Georg Cohn, "Neutralite et la Societe des Nations" in Munch, *Les origines et l'oeuvre de la Societe des Nations.* Copenhague, 1924.

when it adopted the following resolution with regard to Article 16 of the Covenant:

> 3. The unilateral action of the defaulting State cannot create a state of war; it merely entitles the other Members of the League to resort to acts of war or to declare themselves in a state of war with the Covenant-breaking State; but it is in accordance with the spirit of the Covenant that the League of Nations should attempt, at least at the outset, to avoid war, and to restore peace by economic pressure.[26]

The question of how far sanctions under Article 16 can lawfully be carried out *without* resort to war is discussed in a Report of May 17, 1927 by the Secretary-General of the League of Nations.[27] It says:

> "It may be noted here that, from the legal point of view, the existence of a state of war between two States depends upon their intention and not upon the nature of their acts. Accordingly, measures of coercion, however drastic, which are not intended to create and are not regarded by the State to which they are applied as creating a state of war, do not legally establish a relation of war between the States concerned. This would seem to be the case even if . . . third States find it necessary to guide their own conduct by the view that a state of war exists. There is no general rule of international law under which application of the economic sanctions would automatically produce a state of war."

Thus, when a Member of the League resorts to war in disregard of its agreements under certain articles of the Covenant, the other League Members can apply sanctions which, at their choice,[27a] may or may not constitute war with the aggressor. If, however, some of the members decide to go to war against an aggressor, others may decide to remain neutral.

It thus appears that, in spite of the theoretical antagonism between neutrality and a League of Nations, neutrality would be possible for League Members in certain cases.

INTERVENTION PROVISIONS OF ARTICLE 11

However, the important proviso as to Article 11 which has already been mentioned several times must now be discussed. The theory has recently been advanced that despite apparent gaps in the Covenant which seem to permit war and neutrality to League Members in certain cases, a broad integrative construction of the Covenant will give the League Members a right of intervention which can prevent all League wars, except, possibly, wars of breach—that is, violations of the Covenant. Thus neutrality, according to this theory, would never be possible for League Members.[28]

This intervention theory is based primarily on the possible application of the sanctions of Article 16 to cases before the Council arising under Article 11.[29]

Article 11 provides:

> 1. Any war or threat of war, whether immediately affecting any Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.
> 2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

This Article, it is argued,[30] gives the League Members a right of intervention, not only before any attempt has been made to settle a dispute in accordance with one of the methods in Articles 12-15, but even if such an attempt has been made and has failed.

For example, suppose a dispute arises between states A and B, Members of the League. They decide to submit it to inquiry by the Council under Article 15. The Council fails to reach a unanimous report, so by Article 15, Paragraph 7, the states regain their liberty of action. They prepare to fight a private war, *i. e.*, a war not forbidden

26. Cf. F. P. A. *Information Service.* Vol. III, No. 25, "League of Nations and Outlawry of War," p. 405. Also League of Nations *Reports and Resolutions on Art. 16 of the Covenant.* Document A. 14, 1927. V. p. 42.

27. Cf. *Report of the Secretary-General,* May 17, 1927 on "Legal Position Arising from the Enforcement in Time of Peace of the Measures of Economic Pressure Indicated in Article 16 of the Covenant, Particularly by a Maritime Blockade." Doc. A. 14, 1927. V. p. 83, 87.

27a. F. P. A. *Information Service,* Vol. III, No. 25. "The League of Nations and Outlawry of War," p. 404.

28. This theory has been discussed by Professor Malbone Graham in the *California Law Review,* July, 1927. Vol. XV. No. 5, *The Effect of the League of Nations Covenant on the Theory and Practice of Neutrality,* p. 371 ff. Cf. Also Schücking und Wehberg, Op. cit. p. 168, 468 ff., 513.

29. Discussions as to the importance of Article 11 are to be found in the League of Nations Official *Journal,* 8th year. No. 2, February, 1927. *Minutes of the 43rd Session of Council,* 1926. p. 133 ff.

30. Schücking und Wehberg. Op. cit., p. 469, 513; Gonsiorowski, Op. cit., p. 326 ff.

to them by the Covenant. State C, not a party to the dispute, brings the threatened war to the attention of the Council in accordance with Article 11. Under its power to "take any action that may be deemed wise and effectual to safeguard the peace of nations"[31] the Council decides to forbid the war, and declares that the sanctions of Article 16 will be enforceable against either party to the dispute which seeks to fight—even though the war is *otherwise* permitted by the League.

The significance of such a decision by the Council would be this: The sanctions of Article 16 are by the terms of that article invocable only as *punitive* measures, that is, when a Member of the League *has resorted* to war in violation of its obligations under Articles 12, 13 or 15. But under Article 11 the Council could conceivably invoke the sanctions of Article 16 as *preventive* measures whenever peace was endangered—regardless of whether any violation of the Covenant was threatened. This, then, is the intervention theory of sanctions. The Covenant may, in theory, permit war and neutrality to League Members in certain cases, but, in practice, war and neutrality are possible only if League Members do not intervene under Article 11.

COMPLICATIONS OF VOTING UNDER ARTICLE 11

The practical difficulty in the intervention theory would be that in each case when a licit League war was imminent, because of failure to reach a settlement under Articles 12-15, the Council would already have failed once to settle the dispute so as to prevent the possibility of war.[32] It is possible that if the Council took the matter under consideration a second time it could reach a solution satisfactory to both parties. In considering whether this would be probable it must be noted that whereas the votes of the parties in dispute are not counted in computing unanimity under Article 15, Paragraphs 6 and 7, voting under Article 11 would probably have to be unanimous, *including* the votes of the interested parties, in conformance with Article 5 of the Covenant. Thus unanimous action might be more difficult the second time the Council acted in the dispute than the first time. The same rule as to unanimity would apply if the Assembly took cognizance of the dispute under Article 11.[33]

The intervention theory may work out so as to make neutrality impossible for League Members in all cases, but there remains the question of the neutrality of non-Members of the League in future wars.

NEUTRALITY AND NON-MEMBERS OF THE LEAGUE

The most difficult problems which are likely to develop in connection with wars arising under the Covenant of the League of Nations may easily be those caused by the desires of non-member states to remain neutral. To state the question which at present is being widely discussed: What will be the attitude of the United States in the case of wars arising under the League? The position of the United States as one of the economically strong powers of the world has led many observers to question the value of any League measures against an aggressor nation, if the United States should insist on its right to trade freely with such an aggressor.

31. See Article 11.

32. In the case of an award under Article 13 which had not been carried out, the Council would have a first attempt at settlement under the last sentence of Article 13, Paragraph 4. But it could only "propose" measures to be taken, whereas under Article 11 the League has power to "take any action" to safeguard peace. In both cases it would seem that voting would have to be unanimous in accordance with Article 5.

33. Schücking und Wehberg, Op. cit. p. 469. Article 5 of the Covenant provides in Paragraph 1 that "except where otherwise expressly provided in this Covenant, or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting." It is not expressly provided in Article 11, as it is in Article 15, that the votes of the parties to the dispute shall not be counted in calculating unanimity. The Advisory Opinion (No. 12) of the Permanent Court of International Justice in the Mosul Dispute might indicate that an attempt will be made to extend the qualified unanimity of Article 15, Paragraphs 6 and 7, to Article 11, in spite of Article 5. However, in the Mosul Advisory Opinion the intention of the parties (as interpreted by the Court) was that their votes should not be counted in calculating unanimity, *i. e.*, they agreed not to have their votes counted. Cf. Publications of the Permanent Court of International Justice. Series B, No. 12, p. 32.

Gonsiorowski, Op. cit. p. 329-330 also holds that voting under Article 11 must be unanimous according to Article 5, Paragraph 1, and that a party in dispute can oppose its veto to any decision of the Council or Assembly. He cites the Greco-Bulgar dispute of October, 1925, where a dispute came before the Council under Articles 10 and 11 and the decisions were unanimous *including* the votes of the interested parties. At that time M. Briand, President of the Council said, "The unanimity shown on this occasion among the Members of the Council *and the representatives of the two Governments concerned* showed that the nations were turning towards the work of peace for which the League of Nations had been constituted." League of Nations Official Journal, 6th year, No. 11 (Part II) November, 1925. Minutes of the 36th (Extraordinary) Session of the Council. p. 1710.

The attitude of the United States towards League measures against a covenant-breaking state would probably vary according to the measures taken by the League. It is therefore necessary to discuss the possible attitude of the United States:

I. Towards a war in which all League Members were engaged against a covenant-breaking state, *e. g.*, a war under Articles 10 or 16.

II. Towards a war in which only some of the Members of the League were at war, other Members remaining neutral, *e. g.*, a war of enforcement or a duel war.

III. Towards League punitive measures falling short of war, *e. g.*, sanctions under Article 16 which might be economic or military, but which were in the nature of international police measures against a covenant breaker.

AMERICAN NEUTRALITY NO PROBLEM IN GENERAL LEAGUE WAR

I. If *all* the Members of the League engaged in a war against a covenant-breaking state, the position of the United States as a neutral would present no very great problem. The League Members could prevent any direct trade between the United States or its nationals and the covenant-breaking state in accordance with the traditional rules of international law. That is, they could establish a joint blockade of the ports of the covenant-breaker. The United States has always recognized blockades maintained in accordance with the rules of international law and there is no reason to think that it would refuse to recognize one in the future. It would be the same with other belligerent rights such as search, seizure or contraband.

There would be no obligation on the part of the United States to prevent its nationals from attempting to violate a blockade, but it could not protect them if they were caught by the belligerents. The situation would be exactly the same as in a war in which the League was not involved.[34]

Similarly the question of *indirect* trade between the United States and a covenant-breaking state would raise no great problem. Suppose United States trade with a state bordering the covenant-breaker should increase so largely as to arouse suspicion that the goods were in reality destined for the covenant-breaking state. This would be of no concern to the United States and would not justify seizure of American vessels en route to the border states, because the obligation to prevent goods from going through a border state to the covenant-breaker would be on the border state, as a Member of the League. The state would be violating its obligations under Article 16 if it allowed goods to cross its territory to the enemy.

The question may be looked at in another way. Since all League Members would be belligerents, it would be to their interest to refuse to accept any goods from the United States beyond what they needed themselves and in this way to prevent the possibility of goods crossing their territory to the enemy. Whether at war or in peace a nation may limit its trade with any other country at will.

A real problem which might arise under a war of all League Members against a covenant-breaker would be where a non-Member of the League happened to be territorially adjacent to the covenant-breaking state. Two situations might arise in such a case.

(a) Trade between the territorially adjacent non-member and a second non-member would be subject to a legitimate application of the doctrine of continuous voyage; that is, goods which the captor could prove were absolute contraband and were destined in reality for the covenant-breaking state would be liable to seizure on the high seas while on a voyage between the two neutral states. Except for this contraband trade, however, there could be no legitimate interference by League Members with trade between the two non-members.

(b) Trade overland between the territorially adjacent non-member and the covenant-breaking state would raise a real difficulty for the League. Unless it wished to incur a possible war with the neutral non-member, the League would have to let the neutral decide for itself whether or not it would continue to trade with the covenant-breaker.

A problem would likewise arise should the League Members decide that under mod-

34. Cf. F. P. A. *Information Service*. Vol. 4, No. 1. March 16, 1928. "Neutral Rights and Maritime Law," p. 2.

ern conditions the traditional rules of international law were inadequate. If a war should take place in which more than fifty nations decided to punish an aggressor, (the only neutrals being non-Members of the League), it is quite possible that the belligerents might decide that it would needlessly prolong the war to observe neutral rights. The attitude of the United States in such a war, where the League proposed to scrap neutral rights while maintaining belligerent rights, is problematical. The same uncertainty would occur should the League engage in *de facto* war measures against an aggressor state while maintaining that no neutral rights (nor belligerent rights *as such*) were involved, because no state of war existed—the measures being in the nature of international police action. The question is discussed below.

U. S. NEUTRALITY LIKELY IN WARS OF ENFORCEMENT

II. A different type of war arising under the League would be one in which some League Members remained neutral, as, for example, a war of enforcement in which one League Member attempted to force an opponent to comply with an award of the Council in its favor; or where two members decided to fight, after the Council had failed to reach a unanimous decision under Article 15.

If the other League Members could remain neutral in such a war, so could the United States. There is no reason to suppose that the United States would refuse to recognize a blockade of either belligerent against the other, as long as the rules of international law, including neutral rights, were observed. Similarly, the United States could not object to the lawful application of other belligerent rights, *e. g.*, search, seizure, contraband, or continuous voyage.

In the absence of a conference to restate the laws of maritime warfare, it is possible that disputes would arise over measures such as the so-called blockade measures enforced during the World War. This difficulty would not, however, be peculiar to the United States. In the absence of any restatement of the rules, the same problems might just as well arise between League Members which were neutral and the League Members which were belligerent, as between the United States and the League belligerents.

ATTITUDE OF U. S. TOWARD LEAGUE POLICE MEASURES

III. More difficult would be the problems which might arise should the League Members under Article 16 undertake forcible police measures against a covenant-breaking state—either (1) military sanctions which they refused to admit created a state of war *de jure*;[35] or (2) other measures falling short of war, such as an economic or pacific blockade.

What would be the attitude of the United States in such cases? Would it insist that the League Members should not interfere with United States trade?

In the absence of a declaration of policy by the United States one can only speculate as to its probable attitude. However, certain possibilities occur.

1. *Case of military sanctions by the League Powers.* The United States would be legally justified in insisting that the military action (which the League refused to admit was war) was in fact a war, though the League called it international police action; and in insisting that if United States trade were interfered with—that is, if rights pertaining only to belligerents in time of war were exercised by League Members against United States trade—that the corresponding neutral rights of the United States should be respected. It could insist likewise that the League could only take measures permitted a belligerent by international law, that is, it could not extend the law to meet new conditions.

Whether or not the League Members respected the United States' claims would depend on whether they wished to run the risk of a possible war with the United States.

2. *Case of coercive sanctions short of war, i. e., economic or pacific blockade.* As far as non-military measures were concerned, the United States would be legally justified in insisting that, since no war existed, there existed no right of League Members to interfere with United States trade. The rights,

35. Cf. Above p. 24. The legal rights of a non-member are not affected by the Covenant of the League. "In applying the economic sanctions of Article 16 without resort to war," says the Report of the Secretary-General already cited in note 27, "the Members of the League must fully respect the rights of third states." *Report*, loc. cit., p. 86.

it could claim, which the League Members were exercising, were in reality belligerent rights which the United States could never permit to be exercised against it in time of peace.

PACIFIC BLOCKADE AND VESSELS OF THIRD STATES

The previous attitude of the United States towards pacific blockade is determinable. A pacific blockade has been defined as follows:

> ". . . . an act of force primarily directed against the State blockaded with a view to coercing it to follow the line of policy desired. As it occurs in time of peace there are no belligerents and therefore no neutrals, since neutrality is merely the condition of a State in relation to two opposing belligerents."[36]

The most troublesome question connected with a pacific blockade is whether it can be applied to the vessels of states other than the blockaded state or the blockading states. Oppenheim states that "all writers agree that the blockading State has no right to seize and sequestrate such ships of third States as try to break a pacific blockade."[37]

In practice, however, states have sometimes tried to enforce a pacific blockade against the vessels of third states. In a *Memorandum on Pacific Blockade up to the Time of the Foundation of the League of Nations*, prepared by M. Giraud, of the League Secretariat,[38] the following conclusions are set forth:

> A. Pacific blockades have been resorted to by all the Great European Powers.
>
> B. No great non-European power has ever resorted to these methods.
>
> C. Pacific blockades have practically never been instituted except by powerful States against weaker ones (small States or States possessing no powerful fleet).
>
> D. The United States Government is entirely opposed to pacific blockades, to which it has never had recourse, and has categorically declared on several occasions that it would not allow United States vessels to be stopped or searched, except in actual warfare. In 1897 when France, Great Britain, Italy, Germany, Russia, and Austria-Hungary notified the United States of a pacific blockade against Crete, the United States Secretary of State replied: ". . . . I confine myself to taking note of the communication, not conceding the right to make such a blockade. . . ." Similarly, in 1902, the United States Ambassador at Berlin declared, in reply to the proposed pacific blockade of Venezuela, that the United States "did not acquiesce in any extension of the doctrine of pacific blockade which may adversely affect the right of States not parties to the controversy, or discriminate against the commerce of neutral nations."
>
> "While it is true," concludes M. Giraud, "that most precedents are in favor of the enforcement of pacific blockades against third States, the contrary doctrine is strongly upheld by the Government of the United States, and is sometimes admitted by the British Government. We cannot, therefore, deduce from contested precedents a custom of international law. The question remains an open one."[39]

M. Giraud wonders whether a pacific blockade carried out as an international police measure under the League of Nations could not be considered as a very different matter from "the pacific blockades which States have hitherto declared in their own private interests."

U. S. URGED TO WAIVE LEGAL RIGHTS

3. However, despite its legal rights, the United States could acquiesce in international police action, whether military or economic, on the moral ground that it would never countenance international aggression.

The uncertainty as to what attitude the United States would take towards sanctions falling short of war against an aggressor nation has caused uneasiness in certain circles sympathetic towards the League.

Various schemes have therefore been advocated to get the United States to declare what its policy would be in case of League action against an aggressor nation. In 1925 it was suggested by David Mitrany in *The Problem of International Sanctions*[40] that, if the United States should declare that it would not oppose or hamper League action against an aggressor, the task of the League in punishing the aggressor would be simplified. Such a declaration, he suggested, could take the form of an executive pronouncement like the Monroe Doctrine. The determination of which of two

36. Cf. Hogan, A. H. *Pacific Blockade*, Oxford, 1908, p. 26, cited in Hyde, C. C., *International Law*, p. 179.

37. Cf. Oppenheim, Op. cit., Vol. 2, p. 95-6. Similarly the Institute of International Law declared in 1887 that in a pacific blockade: "Les navires de pavillon étranger peuvent entrer librement malgré le blocus."

38. League of Nations. Reports and Resolutions on the subject of Article 16 of the Covenant. A. 14 1927. V. Vol. 1, p. 89-93.

39. Cf. *Memorandum*, cited, p. 93.

40. Mitrany, D., *The Problem of International Sanctions*, p. 79.

or more nations was the aggressor Mitrany thought should be left to the Permanent Court of International Justice or to the League. He defined an aggressor as "a State who, having accepted a test of aggression, stands under that test convicted as an aggressor."[41]

This suggestion found a larger public when advocated by H. Wickham Steed, former editor of the London *Times*, in the December, 1927 issue of *Current History*.[42]

In May, 1925, the Massachusetts Congregational Conference passed a resolution advocated by Professor James T. Shotwell of Columbia University in which the President of the United States was asked "to declare as a matter of general policy that, in case of war between States which have accepted tests of aggression as applying among themselves, this country will not so interpret its rights as to furnish support to a Power which has become a self-confessed aggressor."[43]

THE ORIGINAL AND REVISED BURTON RESOLUTIONS

Of a more practical nature was the original Burton Resolution submitted to the United States House of Representatives on December 5, 1927 by Representative Theodore E. Burton. In its original form this resolution called on the United States to declare that it was the policy of the United States to prohibit the exportation of arms or munitions of war to "any country which engages in aggressive warfare against any other country in violation of a treaty, convention, or other agreement to resort to arbitration or other peaceful means for the settlement of international controversies." The determination of who was the aggressor was left to the President of the United States.

The original draft was modified in Committee so that in its present form (H. J. Res. 183) it is declared to be the policy of the United States "to prohibit the exportation of arms, munitions, or implements of war to *any* nation which is engaged in war with another." Thus, in its present form, the Burton resolution maintains the theory of neutrality by which a neutral treats all belligerents impartially, without regard to the justice or injustice of their cause.

According to international law, while a neutral state must not furnish belligerents munitions of war, it may permit its nationals to trade in munitions at their own risk with either belligerent. If a war of the League nations against an aggressor state broke out today, belligerents of both sides could obtain arms and munitions in the United States. However, the overwhelming predominance of the League allies would probably have the result that they alone would be able to obtain arms on any large scale in the United States. If the Burton resolution passes, neither the League powers nor the aggressor could obtain arms here, except by the consent of Congress.

"AGGRESSOR NATION" DIFFICULT TO DEFINE OR DETERMINE

The definition of an aggressor nation, and the problem of discovering an impartial authority to determine when a nation is an aggressor have received a great deal of attention during the last year. In December, 1927, Senator Capper introduced a resolution into the United States Senate declaring it to be the policy of the United States:

> "II. By formal declaration to accept the definition of aggressor nation as one which, having agreed to submit international differences to conciliation, arbitration or judicial settlement, begins hostilities without having done so. . . ."

More recently "a group of prominent citizens representing all sections of the United States"[44] advocated an even more stringent definition of an aggressor nation, to wit:

> "The aggressor in war is the nation that having failed to settle its dispute by conference, conciliation, arbitration, appeal to judicial procedure or other peaceful means, initiates an attempt to settle it by war.
>
> "This definition does not mean that a nation claiming to have made the attempt or having honestly tried to settle its dispute by some peaceful method may, upon its failure, predicate an excuse to go to war. It must actually succeed in a peaceful settlement or leave the question open to some adjustment other than war, if the treaty outlawing war is to amount to anything."

41. Mitrany, Op. cit., p. 75-88.
42. *Current History*, N. Y. Times Co. December, 1927. p. 347-9.
43. Cf. Mitrany, Op. cit. p. 86.
44. *Christian Science Monitor*, March 2, 1928.

Except for the Burton Resolution, the various proposed declarations of United States policy in case of League action against States do not provide the answer to an important question. Suppose an aggressor nation is satisfactorily defined; suppose it is agreed that the United States shall determine for itself whether a particular nation is an aggressor; suppose the United States agrees, as Mitrany proposed, not to hamper League action against an aggressor—exactly what obligations would the United States assume in undertaking "not to hamper" League action? Would the United States promise to prevent its nationals from trading with an aggressor State? Or could the United States let its nationals trade at their own risk, but with no recourse to protection by the United States Government if they were caught?

Unless this were worked out in detail before the United States adopted such a proposed declaration, grave misunderstandings might arise.

It is very probable that the United States in making such a declaration would wish to include a reservation that the agreement not to insist on legal rights, in a particular case where it decided to countenance measures against the aggressor, should not be construed as an abandonment of its legal rights in all cases. This would provide against any hasty conclusions that, because legal rights on occasion were voluntarily waived, they had become non-existent.

CONCLUSIONS

ABOLITION OF NEUTRALITY NOT REAL PROBLEM

If, rather than attempting coercive measures in time of peace, League members go to war against an aggressor nation, their probable relations with non-members can be more easily determined. War and neutrality are legal situations giving rise to well-defined belligerent and neutral rights and obligations. As long as the League members use sanctions against an aggressor state which create a state of war, and as long as League members observe the rules of neutrality existing before 1914, it is difficult to see how any conflict with the United States would arise, simply because it has been American policy to respect the laws of blockade, search and seizure, and contraband.[45]

Moreover, it is difficult to see how observance of neutral rights by League members would fatally hamper League sanctions against an aggressor, particularly since such questions as those arising in 1914 when United States trade was going through Holland or Sweden to Germany would not occur. Suppose the League of Nations had existed in 1914 and was fighting against Germany as the aggressor nation. The obligation would have been on Holland, Sweden or Denmark, as members of the League, (Article 16) to prevent any goods from going across their territory to the enemy. No occasion would have arisen for intercepting trade between the United States and these countries on the ground that it was ultimately destined for Germany.

The attitude of the United States would probably present difficulties to the League only (1) in case the League members should attempt to abolish or to abridge, as did the Allies during the World War, what were generally regarded as the laws of neutrality; or (2) in case League members undertook international police measures (against an aggressor, but with incidental damage to the rights of non-member states) which the League members claimed did not create a status either of war or neutrality.

ECONOMIC SANCTIONS IN WAR A SOLUTION?

One point remains to be discussed. Because of the rights of third states, a belligerent blockade would better serve to bring about the quick defeat of the aggressor than a pacific blockade.[46] Nevertheless, a report of the Secretary-General of the League of Nations in 1927 said:

> "It is clear that a third State would incur great moral responsibility if it were to compel the

45. A technical difficulty might arise should the League *as such* attempt to maintain a blockade. But the difficulty would be self-assumed and purely formalistic because the United States would undoubtedly recognize a blockade maintained jointly or singly by the Member *States* of the League.

46. Schucking and Wehberg. Op. cit. p. 630

Members of the League to depart from the policy of seeking to secure the due observance of the Covenant without formal resort to war."[47]

A non-member of the League might, however, analyze the situation differently. Why, it might ask, would it incur a grave moral responsibility if it forced the League members to act in accordance with international law?

If a non-member forced League members to admit they were at *war* with an aggressor, two situations might arise.

(1) If the international police measures against which the non-member objected (because they incidentally infringed its rights) were, in fact, warlike operations, no harm would be done in calling them so, *de jure*. Relations between League members and the aggressor need not be materially changed. On the other hand, advantages would arise in relations between League members and non-members—to League members because they could lawfully stop trade between non-members and the aggressor state; and to non-members because, instead of a situation for which there existed no international law, a definite legal status with well-known rights and obligations would have arisen.

47. Report cited, p. 88. (See Footnote 27.)

(2) If the international police measures were exclusively in the form of economic pressure, the fact that League members were forced (because of third states) to declare war on the aggressor need not change the form of pressure exerted by League members on the aggressor. The advantages accruing in relations between League members and a non-member would be as indicated in (1) above. How would the observance of rights of non-members interfere with the operation of an economic boycott? League members would have a legal right to stop trade between non-members and the aggressor; and non-members, while in fact losing their trade with the aggressor, would have the satisfaction of knowing that it was stopped legally—that law rather than lawlessness in a good end was to exist on the high seas.

If experience should prove that the League Members could not suppress an aggressor nation and at the same time observe the laws of neutrality, the United States would be forced to choose between waiving its rights in the particular case (if it believed the League cause to be just) or claiming its rights by force if necessary.

APPENDIX I

COVENANT OF LEAGUE OF NATIONS

(Articles 10-17)

ARTICLE 10

Guaranties Against Aggression

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11

Action in Case of War or Threat of War

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12

Disputes to Be Submitted for Settlement

1. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or *judicial settlement* or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision*, or the report by the Council.

2. In any case under this Article, the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13

Arbitration or Judicial Settlement

1. The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration *or judicial settlement*, and which can not be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement.*

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement.*

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14

Permanent Court of International Justice

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15

Disputes Not Submitted to Arbitration or Judicial Settlement

1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavor to effect a settlement of the dispute and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the disute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within 14 days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE 16

Sanctions of Pacific Settlement

1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-

breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.[1]

2. It shall be the duty of the Council in such case[2] to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE 17

Disputes Involving Non-members

1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of Membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute, when so invited, refuse to accept the obligations of Membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

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1. The Assembly has voted in favor of the following amendments to Art. 16, to replace paragraph one, and the Members are now deciding upon their ratification:

"Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, *which hereby undertake immediately to subject it to the severance of all trade or financial relations and to prohibit all intercourse at least between persons resident within their territories and persons resident within the territory of the covenant-breaking State and, if they deem it expedient, also between their nationals and the nationals of the covenant-breaking State, and to prevent all financial, commercial or personal intercourse at least between persons resident within the territory of that State and persons resident within the territory of any other State, whether a Member of the League or not, and, if they deem it expedient, also between the nationals of that State and the nationals of any other State whether a Member of the League or not.*"

[N. B.—The above amendment was voted by the Fifth Assembly on September 27, 1924, to supersede an amendment voted by the Second Assembly and which was being ratified in the following form: " . . . *which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between persons residing in their territory and persons residing in the territory of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between persons residing in the territory of the covenant-breaking State and persons residing in the territory of any other State, whether a Member of the League or not.*"]

"*It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted.*

"*The Council will notify to all Members of the League the date which it recommends for the application of the economic pressure under this Article.*

"*Nevertheless, the Council may, in the case of particular Members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such Members.*"

2. The Assembly on September 21, 1925, adopted a resolution providing that the words "in such case" shall be deleted. The amendment has been submitted to Member States for ratification.

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